

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 12, 2019

4:00 PM CLOSED EXECUTIVE SESSION* City Administrator, Chris Kukulski's One Year Review

*Note: The Executive Session will be closed, as allowed in Section 2-3-203(3), MCA, as discussions relate to matters of individual privacy and wherein the demands of individual privacy exceed the merits of public disclosure.

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Cole called the meeting to order at 5:35 p.m. and served as the meeting's presiding officer. Councilmember Neese gave the invocation.

MINUTES: October 28, 2019 - Pending

COURTESIES:

- Mayor Cole thanked all Veteran's for their service.
- Councilmember Ronning welcomed all of the newly elected Councilmembers.

PROCLAMATIONS:

- There were no proclamations.

COUNCIL REPORTS:

- Councilmember Joy stated she had attended the Community Development Board meeting and would answer any questions Council may have.
- Councilmember Yakawich stated the USS Billings crew would be visiting Billings November 20-23, 2019.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Melissa Anderson, Healthy by Design: invited Council and public to a Community Health Public forum on November 22nd, 2019.
- There were no ex parte communications.
- In reference to Item 1L, gave an update concerning the repeal of Resolution 92-16531, Franchise Fees.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 4, and 5 ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium. Comments on items listed as public hearing items will be heard ONLY during the

designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Jason Hanson, 2320 Lewis Avenue, Billings, Montana:** in reference to Item 1N, stated the code was very vague and more consideration was being given to the applicant than the neighbors. He added the neighborhood was not against commercial development, but they wanted more say in what could be allowed. He suggested that the proposed car wash be moved to the Councilmembers neighborhoods.
- **Ronda Carlson, 831 Avenue E, Billings, Montana:** in reference to Item 1N, stated the Zoning Commission had denied the application due to lack of compliance and encouraged Council to deny the zone change.
- **Scott Aspenlieder, Performance Engineering, 608 North 29th Street, Billings, Montana:** in reference to Item 1N, stated changes had been made to improve the project for the neighborhood and looked forward to presenting the project to Council at a future date.
- **Mike Nelson, Northern Hotel, Billings, Montana:** in reference to Item 1K, stated the money raised for Crime Prevention Through Environmental Design (CPTED) would go to small businesses in order to make them safer. He stated that he would be adding \$5,000 to the fund to help businesses.

There were no further speakers, and the public comment period was closed.

1. CONSENT AGENDA

A. Bid Awards:

1. **2019 Patching Unit.** (Opened 10/29/19) Recommend Normont Equipment; \$234,433.
2. **Police Evidence Facility.** (Opened 10/29/19) Recommend T.W. Clark Construction; \$3,383,000 and Alternate No. 1; \$44,000.

B. Amendment No. 1, Scheduled Airline Operating Agreement and Terminal Building Leases, Allegiant Air, LLC, United Airlines, Inc., Horizon Air Industries, Inc., and Delta Air Lines, Inc.; \$1,228,000.

C. Consultant Services Agreement with Jacobs Engineering for an Asset Management Program; \$409,130.36.

D. Declaration of Agricultural Covenant with Dover Ranch.

E. Memorandum of Agreement (MOA) between the City of Billings and Montana Department of Transportation (MDT) for the expansion of fiber network along 27th Street.

- F. **Professional Engineering Services Contract** for W.O. 20-08: Low Service Pump Station No. 1 Backup Generator; HDR Engineering, Inc.; \$135,200.
- G. **Purchase** of 11 vehicles from Bison Ford for 2020 Ford Interceptor SUV vehicles; \$395,580.68.
- H. **Purchase** of 77 In-Car Digital Video Cameras; \$449,999.38.
- I. **Appointment** of Teague Westrope as part-time Judge for Billings Municipal Court.
- J. **2019 State Homeland Security Grant** for backfill, overtime and replacement of equipment for the Billings HazMat team; \$250,000.
- K. **Allocate** \$20,000 in Tax Increment Financing (TIF) funds from the North 27th Street Urban Renewal District (URD) for the creation of the Crime Prevention Through Environmental Design (CPTED).
- L. **Resolution 19-10836** repealing Resolution 92-16531, Water and Wastewater Franchise Fees.
- M. **Second/Final Reading Ordinance 19-5727 expanding Ward II (Annexation 19-02)** for an approximate 12.053 gross acre parcel of land described as Tract 1-A of Amended Tract 1 of the Corrected Certificate of Survey No. 840, Second Amended, generally located east of Kiwanis Trail and southeast of the intersection of Barrett Road and West Echo Drive. Barrett Road, LLC, owner.
- N. **Second/Final Reading Ordinance for Zone Change 973:** a zone change from Residential Professional (RP) to Neighborhood Commercial (NC), on Lot 7A Amended, South 150' of Lots 6 and 7, of Arnold Subdivision 2nd Filing, a 30,772 square foot parcel of land, generally located at 2335 Lewis Ave. Ed Sermon, owner; Scott Aspenlieder, Performance Engineers, agent. Staff recommends approval.

O. **Bills for the weeks of:**

- 1. October 7, 2019
- 2. October 15, 2019

Councilmember Clark separated Consent Agenda Items 1K and 1N for discussion.

Councilmember Friedel separated Consent Agenda Item 1L for a vote.

Councilmember Brown separated Consent Agenda Item 1O2 in order to abstain.

Councilmember Cromley separated Consent Agenda Item 1O1 in order to abstain.

Councilmember Cromley separated Consent Agenda Item 1A2 for discussion.

Councilmember Neese separated Consent Agenda Items 1E and 1D for discussion.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Items 1A2, 1D, 1E, 1K, 1L, 1N, 1O1 and 1O2, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Ewalt, in reference to Item 1G, asked how many local car dealerships had sent in bids for the Police vehicles. Mr. Kukulski stated the bid had been open to all local dealerships and none of them had submitted a bid.

Mayor Cole, in reference to Item 1A2, asked about financing for the Police Evidence Project. Kevin Iffland, Assistant City Administrator, stated the City had obtained an INTERCAP loan that would be presented to Council at the next business meeting. Mayor Cole asked for clarification on INTERCAP Loans. Andy Zoeller, Finance Director, stated the INTERCAP Loan was set up by the State of Montana and allowed the City to receive the States GO rate. He added it was a variable rate loan that was adjusted annually. He added that repayment would come from the General/Public Safety Fund but the annual recommendation was to have the South TIF assist in making the loan payment.

Councilmember Joy moved for approval of Item 1A2, seconded by Councilmember Neese. Councilmember Cromley stated Council had toured the existing facility as a proposed location for the new Police Evidence Facility and could not support a brand new building. He stated it was too much money for an evidence building and would rather see the money spent on a project that would better benefit the City.

Councilmember Neese asked about combining the evidence facility with a new City Hall at a later date. Mr. Iffland stated it had been determined during the bidding process that the current proposed location was the best option available for the Evidence Facility. He added the new City Hall RFP was not planned for the near future and the proposals received had not allowed for space for an evidence building and impound lot.

Councilmember Neese asked for clarification on the current needs and requirements for the Evidence Facility. Lieutenant Hart stated the Evidence Facility would have completely different fire code requirements and he would be concerned with having it attached to City Hall. He added that the need for a large impound lot would only get greater and could not see having that amount of space attached to a City Hall.

Councilmember Brown stated he thought the bid was "bloated" and the City could do better.

Councilmember Neese made a substitute motion to delay the vote until the City Hall review committee could research combining the projects. The motion died due to the lack of a second.

Mr. Kukulski stated increased revenues from SBURD would fund the Evidence Facility. He reminded Council that the Downtown Urban Renewal District would not have the funds. He added that he did not think the bid was bloated.

Councilmember Ronning stated the Evidence Building plans had been discussed for several years, and thought it was time to move forward.

Councilmember Friedel stated he would support moving the Police Department out of City Hall and into the Evidence Facility, to allow for more office space, instead of combining City Hall with the Evidence Facility.

Councilmember Cromley stated the time to decide had occurred a year ago, when Council had approved the plans to move forward. He added he had been against a new Police Evidence Building throughout the entire process and stated he should be the only one voting against Item 1A2.

On a roll call vote, the motion was approved 8-3, Councilmembers Cromley, Neese and Brown opposed.

Councilmember Neese asked for clarification on how Item 1D would benefit the City. Monica Plecker, Planning Division Manager, stated it was a private contract between the landowner and a governing body and would not affect zoning or taxation. She added it was not harmful for the City.

Councilmember Ewalt asked what financial advantage there would be to the landowner. Ms. Plecker stated the landowner would be able to create a 37 acre tract of land that did not currently exist, that could possibly be sold with the restrictions attached.

Councilmember Yakawich made a motion to approve Item 1D, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Neese, in reference to Item 1E, asked for clarification on the nondiscrimination clause in the contract. Brent Brooks, City Attorney, stated most MDT contracts included a nondiscrimination provision, which was a requirement from the Governmental Code of Fair Practices.

Councilmember Neese stated he had read the Montana Code State statute and did not see any of the state protected classes language used in the contract. He added he had spoken with the State Senator and they did not recognize this as protected classes in Montana. Mr. Brooks stated some of the protected classes language came from the Montana Human Rights Act.

Councilmember Joy stated she had caught a typo on page 8, referencing the City of Bozeman manager, instead of the City of Billings manager. Mr. Brooks stated the document had been provided by MDT and he would request a corrected contract from them.

Councilmember Neese made a motion to postpone Item 1E for 2 weeks, seconded by Councilmember Friedel.

Councilmember Ronning wanted to clarify, for the record that Councilmember Neese objected to the terminology: sexual orientation, gender identification or expression, as protected classes being used in the contract. Councilmember Neese stated the City's protected classes did not include the same classes listed in the contract and did not support the contract with the existing terminology.

Councilmember Joy made a substitute motion for approval, with the conditions that the items in question would be changed. The substitute motion died due to lack of a second.

On a voice vote, Councilmember Neese's motion to postpone Item 1E was approved 9-2, Councilmembers Cromley and Ronning opposed.

Councilmember Friedel, in reference to Item 1K, asked for clarification on matching funds for the program. Mehmet Casey, Development Director, Downtown Billings Partnership, stated the business owners would bring forward their own money and the program would match that amount, in the form of reimbursement. He added the CPTED evaluation would be provided free of charge for property owners in the area.

Councilmember Yakawich asked for clarification on what improvement measures would be completed. Mr. Casey stated the program encouraged visible, impactful changes such as exterior lighting and landscaping that would help with safety.

Councilmember Friedel moved for approval of Item 1K, seconded by Councilmember Neese. On a voice vote, the motion was unanimously approved.

Councilmember Friedel stated he had separated Item 1L for a vote. He moved for approval of Item 1L, seconded by Councilmember Gibbs.

On a voice vote, the motion was unanimously approved.

Councilmember Clark, in reference to Item 1N, stated he had received several comments from constituents asking Council to reconsider the approval of Item 1N. He added the area was mostly residential and did not think the zone change was appropriate.

Councilmember Clark made a motion to deny approval of Item 1N, seconded by Councilmember Neese. Mr. Brooks reminded Council of the need to identify the specific criteria that had not been met.

Councilmember Clark amended his motion to include criteria 3, 8 and 10, as previously recommended by the Zoning Commission, as reasons for denial. Councilmember Neese seconded the amended motion.

Wyeth Friday, Planning Director, stated he was concerned with Council denying the zone change on second reading since the participants in the public hearing and first reading were not in attendance.

Councilmember Gibbs stated he was concerned with an increase in traffic and the safety of children in the area.

Councilmember Joy asked for clarification on if the application for a zone change or a car wash. Mr. Friday stated Item 1N, was for the zone change from Residential Professional (RP) to Neighborhood Commercial (NC) only and a proposed car wash would require a special review at a future Council meeting.

Councilmember Ronning stated there were many schools in the area that had traffic safety concerns and she had not received any complaints or public comment on the proposed zone change.

Council discussed the possible types of business's that could be built in the proposed NC zone versus the current RP zone.

Councilmember Joy stated Council should consider the possibility that the proposed business could change at any time and the zone change should be considered without considering the possibility of it being a car wash.

On a roll call vote, the motion to deny Item 1N, was approved 6-5, Councilmembers Cromley, Joy, Friedel, Ronning and Mayor Cole voted against.

Councilmember Yakawich moved for approval of Item 1O1, seconded by Councilmember Neese. On a voice vote, the motion was approved 10-0, Councilmember Cromley abstained.

Councilmember Yakawich moved for approval of Item 1O2, seconded by Councilmember Neese. On a voice vote, the motion was approved 10-0, Councilmember Brown abstained.

Mayor Cole called a recess at 7:50 pm.

The meeting reconvened at 7:57 pm.

SPECIAL PRESENTATION:

2. Northwestern Energy's Billings LED Street Lighting Project Update.

Deborah Singer, NorthWestern Energy Senior Key Account & Economic Development Specialist, gave a PowerPoint presentation reviewing the NorthWestern

Energy LED Street Lighting Project for Billings and an update on energy efficiency rebates. She stated 4077 lights had been switched to LED which equaled 1.7 million kilowatts (kWh) and a savings of \$195,000. Ms. Singer stated NorthWestern had awarded the City \$108,870 in rebates for energy efficient equipment installations. She added the 1,883 LED lights had been installed at various City facilities and were estimated to save 1.21 million kWh per year. She thanked City staff for all of their hard work.

REGULAR AGENDA:

3. PUBLIC HEARING AND RESOLUTION 19-10837 approving and adopting budget amendments for FY2020. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Andy Zoeller, Finance Director, stated most of the budget amendment information had been sent to Council earlier in the week. He reviewed the unplanned FY20 expenditures, which included Sidewalk Hazard Repairs, Gas Tax Fund and Central Services Fund.

Council discussed the change in the Gas Tax Fund revenues and proposed allocations.

Councilmember Neese asked for clarification on the type of turf being used at Amend Park. Mike Mayott, Executive Director of Amend Park Development Council, stated it was a quality turf that would have a 8 year warranty.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana:** stated there had been a geo-technical company brought in that had not completed the work, but the City had not gotten their money back for the services. He added street improvements should not be paid by constituents if other projects were not requiring property owners to pay.

There were no further speakers and the public hearing was closed.

Councilmember Joy moved for approval of Item 3, seconded by Councilmember Ronning. On a voice vote, the motion was unanimously approved.

4. NOMINATION AND ELECTION OF DEPUTY MAYOR AND DEPUTY MAYOR PRO TEMPORE. Staff recommends City Council nominate and elect a Deputy Mayor and Deputy Mayor Pro Tempore. (Action: approval or disapproval of staff recommendation.)

Mayor Cole asked for clarification on the timing of the Deputy Mayor Pro-Tempore nomination. Mr. Brooks stated the Deputy Mayor Pro-Tempore should be nominated at the first meeting after the New Year.

Councilmember Clark nominated Councilmember Mike Yakawich, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

5. CITY ADMINISTRATOR'S Annual Performance Evaluation.

Mayor Cole stated Council had met to review the City Administrator's performance during the Closed Executive Session and had discussed Mr. Kukulski's many attributes as well as some areas they would like to see improvement.

Councilmember Ronning moved for approval of a 1.5% salary increase, seconded by Councilmember Joy. On a voice vote, the motion was approved 10-1, Councilmember Neese opposed.

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required.
(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana:** stated SBURA was spending money without providing documentation of how it was being used. He added that the City needed to hold SBURA accountable.

Council discussed how the City paid the various TIF districts and how the districts were held accountable for their spending.

There were no further speakers, and the public comment period was closed.

COUNCIL INITIATIVES:

- Councilmember Gibbs made an initiative to enact a conflict of interest policy between City Council and entities with contractual relationships and/or partnerships with the City of Billings, seconded by Councilmember Neese.

Councilmember Gibbs stated it would be difficult for a Councilmember to vote independently on an item if they had been endorsed or supported by community organizations or entities. Councilmember Joy stated it would be complicated to judge a person's voting independence and added all Councilmembers had relationships with various people/organizations in the town.

Mayor Cole stated political speech was the highest level of protected speech and questioned the legality of the initiative. Mr. Brooks stated he had concerns with the initiative following Civil Rights Statutes and the Legal Department would need to do some thorough research.

Councilmember Brown stated he had been endorsed by the Chamber of Commerce and did not have an issue voting against them, if he did not believe in the item.

Councilmember Ronning stated she would like clarification on a conflict of interest and how an "integrity test" would be used. She added Councilmembers that had received support from the Republican Party could not be allowed to vote on a non-discrimination ordinance. She stated religious views would also need to be discussed.

Mr. Brooks stated he could not recommend the City terminate contracts based on a conflict of interest initiative. He added he could review the initiative in order to help the City avoid any possible legal issues.

Councilmember Clark called the question. On a voice vote, the motion to call the question was approved 9-2, Councilmembers Cromley and Joy voted in opposition.

On a roll call vote, the initiative was approved 6-5, Cromley, Joy, Ronning, Brown and Mayor Cole opposed.

There was no further business, and the meeting adjourned at 9:40 p.m.



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

ATTEST:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk